

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

In re TYCO INTERNATIONAL, LTD.
SECURITIES LITIGATION (MDL)

MDL No. 02-1335-PB
All Cases

O R D E R

The New Jersey plaintiffs seek to depose J. Bradford McGee, a former Tyco employee who is in arbitration with Tyco. Section 16 of the Arbitration Protective Order provides in part that Mr. McGee may not produce or provide any "Confidential Discovery Material" unless he is "ordered to do so by the appropriate authority or (Tyco) waives, in writing, its objection to the requested production or provision." Tyco has designated almost every document as "Confidential Discovery Material" and has refused to waive under Section 16.

The areas involved in the arbitration and those plaintiffs intend to inquire about of McGee substantially overlap. There is a protective order in this case. McGee is at risk of violating the arbitration protective order and Tyco has threatened to enforce it against him. None of the information is attorney-client or work-product protected but rather, at best, confidential business information which can readily receive the protection it deserves, if any, under the Protective Order in

this case.

Tyco's argument to the Panel was disingenuous and contrary to the Federal Rules of Civil Procedure. Federal Rule 26(b)(1) does not require that deposition testimony or other relevant information be admissible at trial, only that it "appears reasonably calculated to lead to the discovery of admissible evidence." Tyco's argument to the Arbitration Panel that McGee can be deposed as to matters of which he has first hand knowledge is erroneous as a matter of law. Discovery is a quest for the truth, not a sporting contest. Tyco's effort to play games will not be permitted.

Tyco is enjoined from making any claim that Mr. McGee's deposition responses violate Section 16 of the Arbitration Protective Order.

SO ORDERED.


James R. Muirhead
United States Magistrate Judge

Date: September 12, 2006

cc: Counsel of Record